



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

DIRECTOR'S ORDER NO. 156

Subject: Budget Changes in Federal Assistance Grants

Sec. 1 What is the purpose of this Order? This Order provides guidance for making budget changes within nonconstruction grants funded under the Sport Fish and Wildlife Restoration Programs.

Sec. 2 To whom does this Order apply? This Order applies to all Service personnel who administer (concur or approve) grants funded through the Sport Fish and Wildlife Restoration Programs.

Sec. 3 What are the authorities for taking this action?

- a. 16 U.S.C. 777.
- b. 16 U.S.C. 669.
- c. 43 CFR 12.70.
- d. 033 FW 11.3C.

Sec. 4 What types of budget changes does this guidance cover? This guidance applies to transfers among separately budgeted programs, projects, functions, or activities (direct-cost categories) for nonconstruction grant agreements.

Sec. 5 What budget changes must the Service review for approval? The Service must approve transfers among direct-cost categories for nonconstruction grants when the cumulative changes exceed 10 percent of the total approved budget in the grant agreement and the Federal share of the grant is greater than \$100,000 (43 CFR 12.70(c)(1)(ii), referred to as the "10-percent rule"), as directed in Sections 6 through 9 below. Note: While not covered by this Order, any budget change in a grant agreement that results in an increase in the total approved budget requires prior written approval by the Service (43 CFR 12.70(c)(1)(i)).

Sec. 6 How should the Service address budget changes? All nonconstruction grant agreements should contain a provision that specifically addresses the State's ability to make transfers among direct-cost categories at any level within an approved grant agreement. Such a provision should allow States to make transfers as long as all funds are expended to achieve the grant's approved fish and wildlife objectives.

- a. Suggested language for the provision is: "This grant is not subject to the prior written approval requirements of 43 CFR 12.70(c)(1)(ii), the "10-percent rule."

b. If the State objects to having such a provision in the grant agreement or if there is a compelling reason not to include such language, the provision will not be in the grant agreement and the procedures in Section 7 or 8 will apply as appropriate.

Sec. 7 If the grant agreement does not contain a provision addressing budget changes, how should the Service handle requests for budget changes during the grant period? If the grant agreement does not contain specific language concerning transfers among direct-cost categories, the State must obtain the prior, written permission of the Service before it transfers more than 10 percent of the total approved budget in the grant agreement among direct-cost categories in grants where the Federal share is more than \$100,000 (43 CFR 12.70(c)(1)(ii)). Such permission should be granted if, in the judgment of the Service, transfers would have been allowed as a provision in the original grant agreement.

Sec. 8 Does the Service have authority to waive the "10-percent rule" if the State makes transfers of more than 10 percent of the total approved budget in the grant agreement without authorization in the grant agreement or the prior written permission of the Service? Yes. In the absence of specific language in the grant agreement (Section 6a) or other prior written permission (Section 7), the Service retains the authority to waive, in writing, the prior approval requirement and retroactively approve such transfers without regard to whether or not the grant is open or closed. This authority is discretionary and the Service will apply it on a case-by-case basis.

Sec. 9 For grants approved prior to issuance of this Order, how should the Service address requests for a "waiver," when the State has transferred more than 10 percent of the total approved budget in the grant agreement without the written approval of the Service? When grants were approved prior to the issuance of this Order and the State failed to get written permission to make a transfer among direct-cost categories in the grant agreement, a "waiver" in writing should be granted if, in the judgment of the Service, the transfer would have been allowed as a provision of the original grant agreement.

Sec. 10 Are there exceptions to the guidance in Sections 8 and 9, above, for nonconstruction grants? Yes. Budget changes involving the transfer of funds allotted for training require prior written approval by the Service unless specifically addressed in the grant agreement (43 CFR 12.70(c)(1)(iii)).

Sec. 11 What is the effective date of this Order? This Order is effective immediately. We will include the contents of this Order in Part 522 of the Fish and Wildlife Service Manual. This Order will expire on September 30, 2004, unless amended, superseded, or revoked.



DIRECTOR

Date: July 17, 2003